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Department of Justice Canada
Ministère de la Justice Canada

BACKGROUND PAPER

FOCUS GROUPS ON FAMILY LAW ISSUES RELATED TO CUSTODY AND ACCESS

2000-FCY-5E

Canada

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Focus Groups on Family Law Issues Related to Custody and Access

Prepared by:
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Presented to:
Family, Children and Youth Section
Department of Justice Canada

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EXECUTIVE SUMMARY

OVERVIEW

Ten focus groups were conducted across the country, five composed of women and five of men. The research did not show major differences of opinion between men and women. Both agreed on all three aspects covered under the research:

Parenting Arrangements

Terminology Associated with Parenting Arrangements

The "Best Interests of the Child" Concept and Criteria

The two main values and beliefs behind the views expressed by the groups were.

The Well-Being of Children

- Children should have a stable and secure life generally, and particularly after parents separate or divorce.
- Children should have regular involvement with both parents, unless a parent has been shown to be unstable or unreliable.
- Children's well-being (short-term and long-term) should be the major consideration in the decisions made by parents after separation or divorce.

The Obligations/Responsibilities of Parents

- Both parents should have responsibility for the welfare of their children, financially and emotionally, even after a separation or divorce.
- Parents should be obliged to share the responsibility for the well-being of their children after separation or divorce.

PARENTING ARRANGEMENTS

Participants were asked to review three models for parenting arrangements following a separation or divorce, and were then asked to choose the arrangement they think should be used:

- Approach 1 reflects the current *Divorce Act* provisions.
- Approach 2 reflects the model recommended by the Special Joint Committee on Child Custody and Access.
- Approach 3 is another possible model that focuses on identifying and allocating parental responsibilities between parents in a flexible way.

The majority of participants were not comfortable with the status quo—only about one in ten favoured maintaining it, while the rest supported changes on how parenting arrangements are arrived at.

Of those who supported changes, the majority (two-thirds of participants) favoured the parenting arrangement described in Approach 3 (see page 6 for a detailed description). The major perceived advantages were:

- It explicitly states that both parents have a role to play in their children's lives.
- It does not establish rigid rules for parental roles now or in the future, thus allowing parents to identify these on their own and to change or renegotiate arrangements over time, as either the need or circumstances warrant for the children or the parents.
- It is the most child-centered approach that allows parents to determine the most suitable living arrangements in the best of interests of the child and to take into consideration the views and opinions of the child if they choose to do so.
- Psychologically, this approach is perceived to be "fair" (neither parent seems to be favoured or left "powerless") and non-confrontational (does not automatically force a parent, usually the father, to seek legal help to defend his position or right to be involved with his children).
- It is the approach most likely to get parents to talk and to try to come to some kind of agreement about a division of roles and responsibilities and less likely to have parents turn their backs on their responsibilities toward their children.

There is one major reservation some participants had about this approach. It assumes that parents can talk to one another and be reasonable immediately or shortly after a separation or divorce. And, as participants pointed out, this is often not the case. Many spontaneously suggested that mediation would be necessary to give this approach the best chance of working.

TERMINOLOGY ASSOCIATED WITH PARENTING ARRANGEMENTS

The focus groups included a discussion of various terms in the context of the different parenting approaches. These terms were:

- sole custody;
- access;
- joint custody;
- shared parenting;
- parental responsibility; and
- parental authority.

The majority of participants considered *shared parenting* to be the most positive phrase to associate with parenting arrangements because it implies the involvement of both parents in the lives of their children. Most felt the term could describe the parenting arrangements in approaches 2 and 3.

The term *parental responsibility* is seen to be the most neutral phrase. With only a few exceptions, the majority said this term would apply to all three approaches.

THE "BEST INTERESTS OF THE CHILD" CONCEPT AND CRITERIA

All participants agreed that "Best Interests of the Child" is a reasonable approach for the courts to use in determining parenting arrangements:

- In situations of conflict, parents are not always objective or capable of deciding on the best course of action regarding parental responsibilities.
- It puts the interests of children first. The court is seen to be acting on behalf of the children who have no power or say in the fact that their parents are separating.
- This approach to decision-making is seen as providing the best possibility for stability for children and as providing a safe and secure environment for their emotional and physical growth.
- This is seen to be a neutral approach, one that is not seen to give preference to either parent.

Quite a few participants said they had difficulty attributing different levels of importance to the 15 criteria because they felt that all on the list were important issues in the consideration of parenting arrangements.

The five criteria that participants considered to be most important in defining the best interests of the child are, in ranked order:

- Arrangements that foster the child's emotional growth, health, stability and physical care at every stage of the child's development.
- A proven history of family violence.
- The opportunity for the child to maintain a strong and stable relationship with both parents.
- The ability of the parent(s) to provide guidance, education, the necessities of life and other special needs of the child.
- The ability of the parents to co-operate and communicate on important issues concerning the child.

INTRODUCTION

PURPOSE

To develop policy options for improving the family law system as it relates to custody and access and to develop communication strategies and messages that support the Department of Justice Canada's eventual policy positions, the Department undertook focus groups to:

- Determine the public's opinion on which "best interests of the child" criteria should be used in the reform of the family law system and the underlying values and rationales that lead the public to those choices and preferences.

- Better understand public attitudes towards current "custody and access" terminology and the possible alternatives that could be used.

METHOD

Number and Location of Groups

A total of ten three-hour focus groups were conducted between March 8 and March 16, 2000 with parents of children under 18 as follows:

Sessions with:	Total	Halifax	Montreal (French)	Toronto	Edmonton	Vancouver
Women	5	1	1	1	1	1
Men	5	1	1	1	1	1
Total	**10**	**2**	**2**	**2**	**2**	**2**

Participant Qualifications

For all of the focus groups, the following participant qualifications and quotas were applied to ensure a good cross-section of parents in each session.

Marital status

Married	2
Common-law	1
Divorced/separated	5
Single	1

Age of Participant

19-34	3
35-44	4
45-54	2

Education Level of Participant

Completed high school	3
Some college/university	3
Graduated college/university	3

Household Income of Participant

<$30K	3
$30K-$49K	2
$50K-$69K	2
$70K and over	2

We also targeted for a good cross-section on working status and occupation.

Candidates were excluded from participation on the following bases:

- Standard occupation exclusions (media, advertising and public relations, marketing research) as well as those who are employed in the legal profession.
- Belong to or are actively involved in a lobbying group on these issues.
- Have attended a focus group in the past six months on any topic, or have ever attended one on this subject.

Number of Participants

In total, there were 82 participants in the research, 42 men and 40 women.

Participant Incentives

The following incentives were paid:

Participants for 5:30 PM	$90
Participants for 7:30 PM	$75

Group Procedures and Discussion Agenda

Copies of the study materials can be found in the Appendices.

At each group session, the moderator gave participants some background information and then provided them with two hand-outs.

Participants were given one hour to read the two handouts titled, *Parental Arrangements Following Separation and Divorce* and *Issues: How Can the Law Determine What is "In the Best Interests of the Child?"*

The handout *Parental Arrangements Following Separation and Divorce* contained:

- A description of three different approaches to parenting arrangements.
- A response section that asked the participants to choose which parenting arrangement they preferred and give the reasons why.

The handout *Issues: How Can the Law Determine What is "In the Best Interests of the Child?"* contained:

- A description of the current situation under the *Divorce Act*.
- A list of 15 different criteria that could be used to determine "best interests of the child".
- A response section that asked participants to rank the 15 criteria based on their perceived importance.
- A response section that asked participants to give their reasons for choosing each of 5 out of the 15 criteria as "most important."

For the following two hours, participants discussed their views on parenting arrangements including the terminology currently in use or that could be used to describe parenting arrangements and the "best interests of the child" criteria.

LIMITATIONS OF FOCUS GROUP QUALITATIVE RESEARCH

By its very nature, qualitative research is exploratory and directional only. It does not seek to quantify the results of the research, nor do the research results represent the attitudes and opinions of the population as a whole.

However, qualitative research does produce a richness and depth of response not readily available through other methods of research. The insight and direction provided by qualitative research makes it an appropriate research tool for exploring the public's reactions to the issues under consideration by the Department of Justice Canada.

MAIN FINDINGS

PARENTING ARRANGEMENTS

Participants were asked to review three models for parenting arrangements following a separation or divorce, and were then asked to choose the arrangement they think should be used.

Approach 1 (Approach currently used in Canada)

The *Divorce Act* states that the parent who has *custody* of a child is responsible for that child's care and upbringing. In the case of a sole custody order, the most common order, the parent with sole custody is responsible for providing the child with a home and making decisions about things like education and health without having to involve the other parent.

The parent who has *access* has "visiting rights" and the right to make inquiries and be given information on the child's health, education and welfare.

It is also possible for courts to make *joint custody* orders but these are the exception. In this type of arrangement, both parents participate in making decisions regarding the child. The courts will only grant joint custody orders when parents get along well enough to make these important decisions together.

Approach 2

In the second approach, even after a divorce or separation, each parent would continue to have all the duties, powers, responsibilities and authority that all parents have. Both parents would share all the rights and responsibilities of raising the children equally, or almost equally. The child would live with each parent for an equal or near equal amount of time and both parents would have equal authority to make decisions about child related matters. One parent could not make major decisions about the child without the consent of the other parent. Courts would be a last resort to resolve disputes that could not be settled by the parents.

Approach 3

In Approach 3, even after a divorce or separation, each parent would continue to have all the duties, powers, responsibilities and authority that all parents have. However, this would not mean that living arrangements for the child or decision-making authority have to be shared equally between the parents. Different parental responsibilities would be identified and allocated between the parents in a flexible way.

Parents could share responsibilities equally when it is workable and appropriate to do so. Parental responsibilities might also be divided in some other way between the parents or given exclusively to one parent if that best meets the needs of the child. If parents are unable to work out the division of responsibilities together, this would be done by the courts.

In this chapter, we discuss:

- The principles that participants brought to bear in their assessments of the parenting arrangement options and in determining the most important criteria for the best interests of the child.
- The preferences for parenting arrangements.
- The perceived advantages and disadvantages of each option.

GUIDING PRINCIPLES

The main values and beliefs behind the views expressed on parenting arrangements by the groups can be divided into three broad categories:

(1) The well-being of children.

(2) The obligations/responsibilities of parents.

(3) The fairness to both parents.

We elaborate on each of these below. In relative terms, participants seemed to apply far more weight to the well-being of children and the obligations and responsibilities parents have towards them than they did to fairness to both parents.

The Well-Being of Children

- Children should have a stable and secure life generally, and particularly after parents separate or divorce.
- Children should have regular involvement with both parents, unless a parent has been shown to be unstable or unreliable.
- Children's well-being (short-term and long-term) should be the major consideration in the decisions made by parents after separation or divorce.

The Obligations/Responsibilities of Parents

- Both parents should have responsibility for the welfare of their children—financially and emotionally—even after a separation or divorce.
- Parents should be obliged to share the responsibility for the well-being of their children after separation or divorce.

Fairness to Both Parents

The exceptions to the following principles would apply in situations where a parent has been shown to be unreliable or unstable.

- Both parents should have the right to be regularly involved in their children's lives after a separation or divorce.

- Both parents should have the right to be involved in making decisions that concern the welfare of their children, particularly major decisions.

PREFERENCES FOR PARENTING ARRANGEMENTS

The majority of participants were not comfortable with the status quo—only about one in ten favoured maintaining it while the rest supported making changes on how parenting arrangements are arrived at.

Of those who supported changes, the majority (two-thirds) favoured the parenting arrangement described in Approach 3. The others were split between Approach 2 and "not sure" which approach would work best.

Importantly, men and women were not different in their choices and the preferred approach.

Approach 3

As we've stated, the majority of participants preferred this approach to parenting arrangements. It is seen as the approach that best:

- Keeps the rights of children as paramount while still giving full responsibility and decision-making authority to both parents.

Perceived Advantages

This approach explicitly states that both parents have a role to play in their children's lives in terms of:

- Duties and responsibilities.

- Power and authority.

As such, it is not seen as marginalizing either parent or as suggesting that one parent's contribution to the well-being of children was more or less important in the past or will be in the future.

This approach is seen as treating both parents equally as responsible, mature adults with the best interests of their children at heart.

This is also seen as supporting the principle that children need and are entitled to have both parents in their lives.

Another perceived advantage of Approach 3 is that it does not establish rigid rules for parental roles, thus allowing parents to identify:

- What is generally in the best interests of their children, on the assumption that parents best know their own children and their needs.

- What role they can reasonably play in their children's lives by allowing for each parent's individual circumstances (e.g., financial, job-related, living arrangements, lifestyles) and their abilities (parenting skills, strengths and weaknesses, personal interests and children's interests, etc.).

Participants felt this approach recognizes that:

- Not all marital relationships were the same in terms of the roles played by each parent in the lives of their children.

- There are different circumstances leading to a separation or divorce.

- Roles played by each parent in the past may not be the same role they want to or can play in their children's lives in the future.

Under this approach, arrangements can be changed and renegotiated by parents over time, as either the need or circumstances warrant for the children or the parents. Of all the parenting approaches, this approach allows for the greatest flexibility for everyone involved.

Approach 3 also places the decision-making power with parents, relying on court intervention only when a dispute cannot be settled.

Children need stability in their day-to-day lives. They also need roots, a routine and consistency. This is particularly true when parents separate or divorce.

Approach 3 was felt to allow parents the greatest flexibility in determining how best to achieve this and was seen as the most child-centered approach of the three:

- Parents can determine the most suitable living arrangements in the best interests of the child.

- It is the only approach that allows parents to consider the views and opinions of the children if they choose to do so.

Importantly, this approach was seen to put the "power" and decision-making role in the hands of parents who best know the needs of their children psychologically and physically.

Psychologically, this approach was perceived as "fair" and non-confrontational because:

- Neither parent seems to be favoured or left "powerless."

- While it does make provision for conflict resolution, it does not automatically force a parent, usually the father, to seek legal help to defend his position or his right to be involved with his children.

The period following a separation or divorce is often a very difficult time for people. It was felt that this approach is:

- Most likely to get parents to talk and to try to come to some kind of agreement about a division of roles and responsibilities; if it doesn't work it can be changed or renegotiated "once the dust has settled," without parents having to go through the expense and emotional upheaval of a court battle.

- Less likely to have parents turn their backs on their responsibilities toward their children.

Some also hypothesized that the "forced" discussion of roles and responsibilities centered on the children would result in better communication between parents, despite the emotional strain of the marital breakdown.

Participants also felt that this would avoid the child being "pulled in one direction or the other" and provide some modicum of peace in children's lives.

Concerns/Reservations with Approach 3

There was one major reservation some participants had about this approach. This approach assumes that parents can talk to one another and be reasonable immediately or shortly after a separation or divorce. As participants pointed out, this is often not the case.

Many spontaneously suggested that the availability of third party intervention (e.g., mediation) would have to be a necessary part of Approach 3 to give it the best chance of working.

There were several other concerns mentioned by a few participants:

- There was some concern expressed that, given the flexibility of this approach, it could be easy for one parent to take advantage of the situation and not fulfil his or her obligations. For example, some men might change their arrangements on short notice (i.e., call their former wives at the last minute to inform them that they could not make it).

- A few saw the potential for this approach to lead to continual litigation; the parameters are so loose and open it can lead to continual battles in renegotiating roles and responsibilities.

Approach 2

Most participants did not prefer this option for parenting arrangements. While many said they felt the idea of "literal equality" was a good one in principle, they did not feel it was practical, workable or reasonable in general, and that certain aspects of it were not in the best interests of children. In fact, most participants saw this approach as being more about what parents may want (and even that was questioned), than what might be the best circumstances for the child.

Most participants saw a number of the positive aspects of Approach 3 also captured in Approach 2. Briefly, these were:

- Both parents have a role to play in their children's lives.
- The approach is "fair" in that it doesn't favour one parent over the other.
- It is in the best interests of the children because both parents would continue to be an integral part of their children's lives.
- It will promote a greater sense of responsibility in both parents and result in greater stability for children.

Perceived Advantages

Approach 2 explicitly states that parents have an *equal* role or almost equal role to play in their children's lives because:

- Children would live with each parent for an equal or near equal amount of time.
- Both parents have equal authority to make decisions about the children.

As such, it is seen to clearly lay out the ground rules for how parents will interact and that the children will have access to both parents.

Many felt that this comes closest to co-parenting even if parents and children do not live together.

There is a sense among some participants that this approach would result in the least confrontation between parents because:

- There is a clear definition of living arrangements for the child and the authority and decision-making power of each parent. Therefore, there is no need or room for negotiation, removing some of the major "bones of contention" between separating and divorcing parents.
- It forces parents to communicate regarding the major decisions that affect their children and to encourage them to work together in the best interests of their children.

This approach is seen to be the most equitable financially. Because custody is 50/50, participants assumed that there would be no child support paid by one parent to the other. Each parent carries his or her own freight and the child "will not suffer or go without."

Further, a number of participants felt that the elimination of support orders would also eliminate the profit motive in separations and divorces involving children.

This approach is seen to "force" fathers who "have taken off" to shoulder responsibilities for their children.

Concerns/Reservations with Approach 2

Participants raised two significant concerns against Approach 2, both relating to the "literal equality" in living arrangements and decision-making.

Living Arrangements

Most participants focussed on the aspect of "equal or near equal" living arrangements. Many did not feel this was in the best interests of either the child or the parents.

Participants Concerns Regarding the Child

- Participants felt that children need stability in their lives and being shifted between two homes was judged to be too difficult on the children both physically and emotionally. Many participants voiced the concern that alternating living arrangements actually creates instability—friends, possessions, rooms, schooling, etc., cannot move from one location to the other.

- Children need a routine and need consistency in their lives. This means both parents need the same approach to parenting, the same rules and procedures.

This particular arrangement was seen to be particularly problematic when younger children are involved.

Participants Concerns Regarding the Parents

- Many feel these living arrangements are only feasible when parents live close to one another.

- This type of living arrangement may be financially onerous on parents because they will need to maintain two residences, theoretically doubling the expenses on the same income.

Participants felt that parents should be the ones who make the decision about where and with whom the children should live, as in Approach 3.

Decision-Making

Most participants believe that while the decision-making process in Approach 2 is equitable, it is also flawed because it assumes that following a separation or a divorce people can co-parent without conflict. Importantly, they support the principle (i.e., "that's the way it should be") but reject the workability of it:

- Under this Approach, parents must communicate regularly on child-related matters. While it "forces" parents to work together, this approach creates more opportunities for parents who are not getting along to disagree than was seen to be the case in Approach 3. (That is, in Approach 3 parents do not have to consult one another on a regular basis, or at all, if they choose not to).

- Since one parent cannot make a decision without the consent of the other, Approach 2 was seen as potentially creating power struggles. On a practical level, this can generate negative feelings between the parents, and can also cause delays in making important decisions about the children.

This type of environment is also not seen to be in the best interests of the child.

Some participants also argued that "equal" time is not necessarily the best thing for either the children or the parents and that as a parent "what one wants is 'enough' time so that one can develop a relationship."

This approach is not seen to have the flexibility of Approach 3 in a number of important respects. It is seen to take away decision-making rights from parents as well as their ability to make decisions in the best interests of their children:

- Because it is viewed as dictating how roles and responsibilities will be shared, it does not take into account the circumstances or situations of the parents. (For example, it does not consider the parents' job requirements and how this would coincide with child-rearing responsibilities).

- It does not factor in or even allow parents to consider their ability or willingness to take on 50/50 roles.

- It does not allow for any input from children, either about living arrangements in general or how much and what kind of time they might want to spend with each parent.

- It does not consider such factors as the age of the children, their maturity and their emotional needs.

Some participants felt that if both parents cannot equally hold up their ends under this approach, the children will suffer.

Quite a few participants felt that both relationships and situations change over time and any arrangement for child-rearing needs to allow for that. This is also one of the concerns participants have with this Approach—it does not appear to have any practical mechanism in place to deal with "change" or "unusual situations."

On an emotional level, some participants felt that it would be just as much of a problem to force responsibilities on some parents as it would be to take them away completely. So, while it may be in the best interests of children to have both parents actively involved in their lives, forcing this situation upon a parent who cannot cope or does not want to share the responsibility equally can potentially create a volatile situation.

Approach 1

Only a small minority, about one in ten, favoured maintaining the status quo. These were men and women who were separated or divorced and felt this approach had worked best in their circumstances. There were also a few participants who chose this option because it included joint custody.

Perceived Advantages

While the majority of participants did not feel this is an appropriate approach in general, they did see some circumstances in which one parent needs to have both physical and decision-making responsibility for children. These are:

- When parents cannot get along.
- When one parent does not want the responsibility for the children nor want to be involved in making decisions about them.
- When one parent is judged to lack the appropriate parenting skills.
- When parents cannot agree on child-rearing issues.
- When parents live far apart (in another city or province).

In cases where there has been domestic violence or abuse or where there is a problem with some form of addiction, one parent needs to be looking after the interests of the children.

Another perceived advantage of this approach is that it clearly spells out the roles and responsibilities for each parent. The parent with custody is responsible for all aspects of the children's lives and the other is granted visitation rights (the right to see the children but not to be involved with them on a day-to-day basis or involved in any decisions, major or otherwise). In this regard, it was seen by some to be less confrontational than either Approach 2 or 3 because the division of responsibilities and rights of parents were clearly spelled out and no "consultation" is required.

Also, a few participants who chose this option felt that there would be less chance of ongoing litigation because of the cost associated with getting changes made to the arrangement.

Because children live full-time with one parent, this parenting arrangement was seen as providing the children with a stable environment.

Concerns/Reservations with Approach 1

Notably, the views of men and women were very similar on the shortcomings and perceived problems with this approach. It was seen by most as neither in the best interests of the child nor the parents and as contradicting most, if not all, the guiding principles that participants expressed about the well-being of children and the obligations and responsibilities of parents. Psychologically, it is seen as adding undue stress to what are already strained circumstances in the breakdown of marital relationships.

Participants also expressed the view that while the other two approaches seemed to be about adult separation or divorce, this approach was seen to "force children to divorce their parents."

Many participants felt that Approach 1 should be the approach of last resort, used only in circumstances outlined previously and definitely not as the starting point for determining parenting arrangements.

The major concerns centred on the perception that this approach sends the wrong message about what are and should be the responsibilities of both parents to their children and the role each has a *right* to play in their children's lives:

- It puts parents on different levels, with one parent continuing on in his or her role as parent while the other one becomes more of a visitor than a parent.

- All the burden of parenting is put on the shoulders of one parent while the other one has few responsibilities.

In effect, this approach is seen as marginalizing parents' contributions to their children and as judging one parent less adequate and less necessary to the well-being of the child. As quite a few pointed out, this is usually fathers.

This approach leaves one parent, usually the father, "powerless."

- They can only be as involved as they are "allowed" to be, not how much they might want to be.

- They have no say in major decisions or on important issues that affect their children.

The role of the "access" parent is thus perceived to be that of a "babysitter and a wallet."

Participants also felt that this approach marginalized or diminished the *importance* of the role that both parents have to play in the lives of their children:

- It signals that one parent is a better parent than the other, with the mother usually being singled out as the better parent of the two.

- This can create an unstable and stressful relationship between parents and children:

  (a) It can lead children to question the emotional attachment of the non-custodial parent, usually the father, towards them.

  (b) It can affect the children's perspectives on parental roles. The custodial parent, usually the mother, becomes an authoritarian figure, the "enforcer" of necessary rules and discipline. In contrast, the father plays the role of "Santa Claus" every second weekend.

- It suggests that children do not need both parents as role models.

The burden of responsibility ends up on the shoulders of the custodial parent, often the mother, who has no choice but to accept all parental duties.

It does not promote co-operation between parents, but rather creates a situation for either a power struggle between the two or an abdication of responsibilities on the part of one of the parents:

- Because one parent can have only visiting rights, it is seen to set up a situation that allows a parent to "cop out" (e.g., "I only have visiting rights; I don't have to do this and I don't have to do that").

- When the custodial parent is vindictive, the access parent can lose out completely. In these situations, the police are viewed as reluctant to get involved and enforce the rights of the non-custodial parent, so there is no recourse for the parent with access.

It does not have any mechanism for dispute resolution other than to go through a lengthy, costly and emotional court battle. In the end, participants felt that both the children and the parents suffer and the only benefit is to the legal system.

This approach was also considered to be adversarial; split along gender lines. The perception of both men and women was that on-going assumptions are:

- Women are good parents and must be proved/shown to be bad parents not to gain custody.

- Men are assumed not to be qualified parents and have to prove they are good fathers.

There were some participants who also pointed out that just because access parents only see their children every second weekend is not a reason to exclude them from decisions concerning their children.

In this approach, most participants agreed that one parent is a "winner"—the one with custody—and the other is a "loser" or at least wronged. In addition, most participants felt that children are the ones who suffer the biggest loss of all:

- The non-custodial parent:

  (a) Has limited access to the children and can be totally deprived of visitation rights.

  (b) Is relieved of most duties.

  (c) Faces undue financial burden.

- The children are denied regular contact with, or access to, one of their parents.

Notably though, some participants felt that no one is a "winner" in this approach—the custodial parent, most often the mother, is also often a "loser" under this approach:

- They have no choice but to take on all parental duties.
- While fathers are the ones most commonly paying support, in many cases, there are significant changes in lifestyles and in what parents can afford to provide their children. There are no longer two household incomes, or in the case of non-working mothers, their only source of income may be support.

TERMINOLOGY USED TO DESCRIBE PARENTING ARRANGEMENTS

During the course of the discussion of parenting arrangements, various terms, and their meaning in the context of the different parenting approaches, were discussed. These were:

- Sole custody.
- Access.
- Joint custody.
- Shared parenting.
- Parental responsibility.
- Parental authority.

For the last three, we also discussed which of the parenting arrangement approaches each term best exemplified.

SOLE CUSTODY AND ACCESS

As discussed in the previous section on parenting arrangements, Approach 1 (the status quo) uses these two terms to delineate parental rights and responsibilities. For most participants, these terms were negative as applied under the law, creating a situation where one parent has more or too much power over the other parent.

Sole Custody

This was seen as clearly stating that one parent has all the rights and responsibilities, usually the mother.

This term was also seen as relieving one parent, usually the father, of most of his responsibilities while leaving the other parent with no choice but to accept all parental duties.

Access

This is the time the non-custodial parent, usually the father, is allowed by the custodial parent to visit with his children.

JOINT CUSTODY

Most participants felt this was a positive phrase, embodying the following:

- Both parents are responsible for the needs of the children (financially, and in the development of the child) and for important decisions related to the children.

- Both parents have equal access to the children.

While equal access to the children meant 50/50 living arrangements for some participants, it did not necessarily mean that kind of equal split for most participants. Some participants felt this approach would allow parents to be with their children on a more frequent and more regular basis even if the children did not live with them.

SHARED PARENTING

The majority of participants considered *shared parenting* to be a positive phrase because it implied the involvement of both parents in the lives of their children.

Most participants felt the term *shared parenting* described the parenting arrangements in both Approach 2 and 3, whereas some felt it best fit with Approach 2. There were also a few (mostly women) who felt it applied to all three approaches.

- Those who felt it applied equally to Approaches 2 and 3, reasoned that these two approaches had participation from both parents, whether or not it was equal participation. In other words, the fact that both parents were *parenting* and involved with their children was far more important than whether it was on a 50/50 basis or some other arrangement.

- Those who felt it best fit Approach 2 did so because they interpreted the word *shared* to mean an equal split down the middle between parents.

- Those few who felt that *shared parenting* also fit Approach 1, gave the following types of arguments to support their positions:

  - The non-custodial parent was no more involved in child-rearing during the marriage than they are now and each parent still contributes something to their children.

  - Any involvement by both parents in their children's lives, at whatever level of involvement, is *shared parenting*.

In contrast, most participants stated that the only approach it does not fit is Approach 1—simply put, they felt there is only one parent looking after the children and, thus, there is no sharing of responsibilities for the children.

PARENTAL RESPONSIBILITY

The term *parental responsibility* was seen to be neutral. With only a few exceptions, the majority said this applied to all three approaches:

- In each of the approaches, there is at least one parent taking the responsibility for the children.

- In all three approaches, there is parental responsibility, albeit to varying degrees and possibly different types (e.g., in Approach 2 it is 50/50 and in Approach 3 it is negotiated between the parents).

PARENTAL AUTHORITY

Parental authority evoked the most negative reactions of the three phrases participants discussed in connection with the parenting arrangements. The main reason is that it is most closely associated with Approach 1.

Most participants viewed the term as meaning *one parent's authority over the other* and as referring to one parent's right to make decisions without consulting or considering the wishes of the other parent (e.g., the parent who has the final word).

Some participants also felt the term applied to all three models because there is *authority* in all three of them, the difference being who has the authority in each case (e.g., is it one parent exclusively or do both parents have it?).

A few participants did not seem to connect the term with parenting arrangements. To them *parental authority* was about the authority a parent has over a child.

DEFINING THE BEST INTERESTS OF THE CHILD

Participants were given a handout that included the following information and task.

ISSUES: HOW CAN THE LAW DETERMINE WHAT IS "IN THE BEST INTERESTS OF THE CHILD"?

Current Situation

At the present time, the *Divorce Act* says that judges have to consider the "best interests of children" when they make decisions about parenting arrangements for children after a divorce. As well, the U.N. Convention on the Rights of the Child states that the best interests of the child shall be a primary consideration in all actions concerning children. This means that judges can decide who the children will live with and who will make important decisions about the children's health, education and so on.

However, the *Divorce Act* does not say what criteria judges should use when making decisions on what is in the best interests of the child.

What we would like you to do

On the following page is a list of criteria that judges could use in making these decisions. First, please read through these criteria, which have been identified as being in the "best interests of the child."

What we would then like you to do is to indicate, from your personal point of view, which of these criteria are:

Most Important for judges to use in making decisions on parenting arrangements.

Quite Important.

Less Important compared to other criteria.

You must put all of the 15 criteria into one of the 3 categories listed above **and** ***you must choose 5 to fit into each of the categories.***

Criteria

1. The opportunity for the child to maintain a strong and stable relationship with both parents.
2. The opportunity for the child to maintain a strong and stable relationship with other members of his or her family.
3. The opinions and wishes expressed by the child.
4. The ability of the parent(s) to provide guidance, education, the basic needs and other special needs of the child.

5. The child's cultural and religious background.

6. The ability of the parents to co-operate and communicate with each other on important issues concerning the child.

7. The ability of the child to adjust to the new parenting arrangement.

8. The willingness of the parents to encourage a close relationship between the child and the other parent.

9. A proven history of family violence.

10. Ensuring there is no preference in favour of either parent on the basis of that parent's gender.

11. The quality of the relationship that the child has with the parent(s).

12. Arrangements that encourage the child's emotional growth, health, stability and physical care at every stage of the child's development.

13. Protecting the child from continued exposure to conflict between parents.

14. The personality, character and emotional needs of the child.

15. The caregiving role assumed by each parent before the breakup.

Prior to discussing their rankings of the criteria, participants were asked the following questions:

- Is *Best Interests of the Child* a reasonable approach for the courts to take in determining parenting arrangements?

- Do you have any concerns that *Best Interests of the Child* would be the sole factor that would be taken into consideration in determining parenting arrangements?

We will discuss the participants' responses to these two questions first.

IS "BEST INTERESTS OF THE CHILD" A REASONABLE APPROACH?

Everyone agreed that the best interests of the child is a reasonable approach to take in determining parenting arrangements. Participants supported this view for the following reasons:

- In situations of conflict, parents are not always objective or capable of deciding on the best course of action regarding parental responsibilities.

- It puts the interests of children before anyone else's. As such, the court is seen to be acting on behalf of the children, who have no power or say in the fact that their parents are separating.

- Using this approach to decision-making is seen to provide the best possibility for stability for children and to provide a safe and secure environment for their emotional and physical growth.

- This is seen to be a neutral approach, one that is not seen to give preference to either parent.

ANY CONCERNS WITH "BEST INTERESTS OF THE CHILD" BEING THE SOLE FACTOR IN DETERMINING PARENTING ARRANGEMENTS?

No one expressed any concern with this principle being applied by judges and courts in their decisions as the primary consideration. A universal sentiment expressed was that the needs of children must come first in situations when marital relationships break down and parents, as much as they might have their children's interests at heart, cannot resolve their differences.

After probing, a few participants did state some concerns that parents themselves were of secondary importance; nonetheless, it was in the best interests of the child for the courts to take into account the impact of the decisions on both the mother and the father as well as the extended family.

THE CRITERIA FOR DETERMINING THE "BEST INTERESTS OF THE CHILD"

The following lists the criteria in rank order of importance as assigned by the participants. Importantly, there is no difference between men and women regarding the top 5 criteria.

Criteria		Ranking
12.	Arrangements that foster the child's emotional growth, health, stability and physical care at every stage of the child's development.	1
9.	A proven history of family violence.	2
1.	The opportunity for the child to maintain a strong and stable relationship with both parents.	3
4.	The ability of the parent(s) to provide guidance, education, the necessities of life and other special needs of the child.	4
6.	The ability of the parents to co-operate and communicate on important issues concerning the child.	5
14.	The personality, character and emotional needs of the child.	6
13.	Protecting the child from continued exposure to conflict.	7
11.	The quality of the relationship that the child has with the parent(s).	8
8.	The willingness of the parents to encourage a close relationship between the child and the other parent.	9
3.	The views of the child.	10

(Cont'd)

Criteria		Ranking
2.	The opportunity for the child to maintain a strong and stable relationship with other members of his or her family.	11
7.	The ability of the child to adjust to the parenting arrangement.	12
10.	Ensuring there is no preference in favour of either parent on the basis of that parent's gender.	13
15.	The caregiving role assumed by each parent during the child's life.	14
5.	The child's cultural and religious background.	15

Before we discuss each of the criteria in detail, there are some general observations that need to be made about the overall ranking.

Quite a few participants said they had difficulty in attributing different levels of importance to the criteria because they felt that all 15 on the list were important issues in the consideration of parenting arrangements.

There were different types of criteria on the list—some were broad and general whereas others were more specific, dealing only with one or two aspects of a particular parenting or child-related issue. Generally speaking, participants said they tended to assign greater importance to the broad general criteria than to the specific criteria. Their rationale was that the basic idea of the more specific one was already *contained* in the broad general statement without it being explicitly stated. This *containment* principle then drove the relative rankings of the specific items lower in each case.

Below, we discuss specific examples of the relationships drawn between items:

- Criterion 12 ranked first and Criterion 5 ranked last.

  For most participants the *arrangements* that would be made (as referred to in Criterion 12) would encompass specific aspects of children's lives such as culture and religion (Criterion 5).

- Criterion 1 ranked third and Criterion 2 ranked eleventh.

  Access to, and involvement with, extended family (Criterion 2) was important for many participants, but the feeling was that if there is continued regular contact with both parents (Criterion 1), then the extended family would also be a part of the children's lives.

  Some participants also tied in Criterion 5. If children had the opportunity to maintain a strong relationship with both parents and other members of the family, then they would have regular exposure to their roots and beliefs.

- Criterion 6 ranked fifth and Criterion 8 ranked ninth.

  Most participants felt that if parents were co-operating and communicating with one another (Criterion 6), then each would be encouraging a close relationship between the children and the other parent (Criterion 8).

  Some also tied in Criterion 13 (ranked seventh)—if parents are getting along, then there is no continual conflict between them.

- Criterion 12 ranked first and Criterion 14 ranked sixth.

  Because parenting plans encompass both the physical and emotional well-being of children (Criterion 12), it was felt that the arrangements that parents proposed would already need to take into account these needs of their children (Criterion 14).

- Criterion 14 ranked sixth and Criterion 7 ranked twelfth.

  The rationale here was that once parents have taken into account the personality, character and emotional needs of the children (Criterion 14), they have, in effect, to the best of their ability, determined how the child would adjust to the new situation (Criterion 7).

  As well, both these continue to be seen as integral components of Criterion 12 because the arrangements parents plan to make were seen to be child-focused.

Most participants considered Criteria 12 and 4 to be complementary. These two criteria were seen as connected, albeit dealing with slightly different aspects of parental responsibilities (which we will discuss in more detail later in this chapter). Generally, participants felt that in parenting arrangements, people should first demonstrate what arrangements they would make for their children. This takes into account all aspects of their lives now and in the future (Criterion 12) as well as how they intend to carry out these plans (Criterion 4).

There were two criteria that dealt with the gender of the parents, one explicitly (Criterion 10) and one implicitly (Criterion 15). Both of these criteria show up on the overall ranking as being considerably less important. Specifically, Criterion 10 was ranked thirteenth and Criterion 15 was ranked fourteenth.

This ranking disguises the fact that most participants had strong feelings about both these items and the role that each should or should not play in parenting decisions.

- Regarding Criterion 10, the majority of participants felt that the status quo unfairly favours mothers over fathers in the determination of parenting arrangements.

- Regarding Criterion 15, most held the view that the courts emphasize the caregiving role of each parent during the marital relationship. This, too, is seen to favour women, more of whom stayed at home with the children. Participants expressed the view that after a marital breakdown, by definition, roles changed for both parents and prior arrangements were less relevant.

Participants felt strongly that the current perceived gender bias in parenting arrangements had to be removed from the system. However, they rationalized the lower ranking they assigned to these criteria in the following way. Many of them chose Criterion 12 and Criterion 4, which deal with the parenting plan and the ability of parents to execute the plan. These two criteria were seen to afford both parents a level playing field and to remove any presumption that either would be a better parent based on either their gender or their past role in caregiving.

THE INDIVIDUAL CRITERIA FOR DETERMINING THE "BEST INTERESTS OF THE CHILD"

Next, we discuss each of the criteria in rank order, focusing on:

- What participants felt was important about each criterion.
- The perceived issues or concerns of participants that affected the relative ranking of importance.

Criterion 12: Arrangements that foster the child's emotional growth, health, stability and physical care at every stage of the child's development

There were a number of participants who commented that this particular criterion embodied the "best interests of the child" concept—it addressed the provisions parents must make for the short-term and long-term needs of children. It was seen to both define what every child needs at a minimum and the role and responsibility of parents to their children.

Quite a few participants saw this criterion as implicitly:

- Involving both parents (i.e., the word "arrangements" implied that both the mother and father were involved in working out the details for their children's welfare) as it should be because both parents have a role and responsibility, and both bring different and important things to a child's life and need to be recognized as such.
- Being about how children will be nurtured.

All the factors included in this criterion are seen to ensure that a child will grow up to be a well-balanced adult. Contributing to this goal are:

- The words "growth and stability."
- The reference to "every stage of the child's development," which recognizes that children's lives are not static and there will need to be adjustments made at various developmental stages.

Many felt that this criterion was analogous to or went "hand-in-hand" with Criterion 4. The slight distinctions between the two are seen to be:

- Criterion 4 takes into account the "ability" of the parents, whereas Criterion 12 deals with the arrangements or agreements of parents for what is needed for their children.

- Criterion 12 seemed to participants to be more oriented towards the emotional needs of children, relative to some of their other fundamental needs.

Criterion 9: A proven history of family violence

General Discussion

Given that this was the second highest rated criterion, it is clear that most participants believed this was an important aspect of family relationships that must be considered in future parenting arrangements. However, different participants interpreted this criterion differently to arrive at this decision.

There were some who interpreted this to be about *physical violence* directed against the other parent *and* the child *or* only directed against the child. Under this interpretation, participants felt the child was at risk and needed to be distanced from the "violent" parent for the following reasons:

- Every child has the right to childhood without fear or suffering.

- Violence generates violence. Children raised in a violent family environment are at risk of themselves becoming violent, both now and as adults.

- Violence directed at children is very costly for society, manifesting itself in such ways in childhood as low self-esteem; delinquency; inability to cope with life, school, and friends; and in later life, producing dysfunctional adults.

However, there was some disagreement among this group regarding the future role of violent parents in their children's lives. Some felt that these parents had lost all rights to be involved with their children. Others did not feel that these parents should be entirely "cut out" of their children's lives (i.e., they should still be allowed to make decisions that affect the well-being of their children and to see them, albeit under strictly supervised circumstances).

There were others who interpreted this to be about violence between spouses and *not* directed at children. Under this interpretation, there were several different views about what the impact of this should be on parenting arrangements:

- Most felt that even though it was not directed at the children, they were nonetheless just as affected by the "poisoned" environment emotionally and were equally at risk as the parent on the receiving end of the violence. Thus, these individuals shared the views of those who had interpreted this criterion to be about violence towards children.

- Some felt that because the violence was between the spouses that, as much as it was not the best environment for children, this should not be weighed as heavily in decisions about parenting arrangements as if the children themselves were the victims.

- Some also argued that in the circumstances surrounding a marital breakdown, tempers flare and people lose control—their whole lives are disintegrating around them. Therefore, for this criterion to be a consideration, they felt the emphasis had to be on the word *history*:

  - It needs to be demonstrated that the violence is pervasive, and not what some participants see as often just an unfortunate part of marital breakdown.

  - It needs to be demonstrated that there is reason to believe the violence would continue once the parents are no longer together (the view stated by some is that people change once they are apart and time has intervened).

In addition to how some participants interpreted the word *history* in this criterion, as discussed above, there were several other interpretations of this word which led to differing views on this criterion:

- A few participants were concerned that this criterion would allow the past of individuals who may have demonstrated this type of behaviour some time ago (but not in recent years) to be considered in parenting arrangements. For example, how would this criterion apply if the behaviour took place 20 years ago?

- Others were concerned that it did not seem to make any provisions for looking at the factors that led up to the violence (e.g., whether the violence was drug or alcohol-related), or if and how the underlying causes themselves have been dealt with. Participants said that they were not condoning violence, but any mitigating circumstances that led to the violence also needed to be examined.

- A few participants interpreted this criterion as including extended family and questioned this aspect in decisions regarding parenting arrangements between a mother and a father.

  One counterpoint to this, mentioned by a number of participants (most of whom interpreted this criterion to be about the nuclear family only), was that if there were to be regular contact between children and a relative with a history of family violence, then this type of history should be considered.

What is "Family Violence"?

There was some discussion about what participants believed constitutes family violence and again, there were differences of opinion:

- Some participants interpreted this criterion as referring to violence against a spouse only. Others interpreted it to be violence directed at both a spouse *and* children *or* directed towards a child, the latter most likely because of the context (i.e., Best Interests of the Child).

- Most participants felt that violence can take many forms other than physical (e.g., emotional and psychological), and that these other forms are as harmful or potentially more so to children's equilibrium. However, some participants said that as the criterion is currently written, they only inferred physical violence and not the other forms because they would label those as "abuse" rather than "violence."

Does a History of Family Violence Have to be Proven/Types of Proof

The majority, both men and women, believed that a history of family violence must be proven for the courts to give it any consideration in determining parenting arrangements. They felt very strongly that it cannot be one parent's word against the other:

- It is easy for one parent or the other to make false allegations during divorce proceedings in general, and particularly in an acrimonious divorce.

- False allegations of this sort could be used by some parents (particularly women) and their lawyers against the other parent (mostly men) to gain custody of children and to increase both financial settlements/support payments for mothers and fees for lawyers.

- Under the current system, there are no perceived repercussions for the parent making false allegations. Even if the charges are later withdrawn or proven false, there are no charges laid or penalties against the accusing parent, often the mother, for making the false allegations.

- Participants felt that the accused parents, mostly fathers, come out as losers in this situation, even after false charges have been withdrawn or the parents have been cleared. This type of situation forces a parent to defend himself against these charges at great personal cost, both emotionally and financially. He has no choice if he wants to see and be involved with his children. Participants also felt that even after an allegation has been proved false, fathers not only have difficulty recovering from this ordeal, but often still come out as losers in the eyes of society and, some fear, in the eyes of their children.

Some participants, albeit a minority, said that even a "hint" of family violence, regardless of the outcome in court, has to be considered in the judge's decision-making on parenting arrangements. Notably, the number of women and men in this group was equal.

We detail below what participants considered to be "proof" of a history of family violence and subsequently, some of the arguments participants put forward about why they were uncomfortable in accepting that type of proof. There was no consensus among participants as to what the courts should accept as proof.

- Some participants felt it should be left up to the courts to decide (i.e., what standards are acceptable in a court of law).

- Convictions of family violence.

- Police reports and records.

- Reports from social workers.

- Medical records.
- Records from shelters.
- The testimony of several people (e.g., neighbours).
- The testimony of a child when obtained by a professional, such as a psychologist or a specialized educator.

Participants expressed a number of concerns about these types of "proof." Most of these concerns focussed on individuals' abilities to provide these levels of proof given that:

- Much of family violence happens behind closed doors and there are no witnesses.
- Some people are reluctant to report incidents of family violence officially or unofficially.
- There is a perceived bias in the legal system favouring women over men in domestic disputes.

We discuss each of these more specifically.

- Participants believe that some women who are the victims of family violence *do not report* these incidents at all, or not until it has been going on for a long time. Further, because they either blame themselves or are ashamed of the situation, participants believe that they also do not report or even discuss their situations with professionals, relations, friends or neighbours. This was also a general observation made about the behaviour of men who are the victims of family violence.

  As a consequence, participants argued that in a number of cases, there is limited proof of family violence in the first place, let alone proof of a history of family violence. Given this, some further argued that it was unreasonable to require a conviction as proof of family violence.

- The concerns expressed with establishing police records as a standard in these cases is seen to put both men and women at a disadvantage.

  - Women or mothers, since they do not report these incidents to police.
  - Men or fathers, since in cases of domestic disputes the police are said to automatically accept a woman's word and to lay charges against a man. Presumption of guilt and a police record precedes an investigation of the charges.

Criterion 1: The opportunity for the child to maintain a strong and stable relationship with both parents

The majority of participants believed it is important to give children the opportunity to remain involved with both parents.

- The parents are separating or divorcing, not the children, and participants feel it is important for children to understand that ending the marriage does not mean that the parents end their relationship with, and responsibilities for, the child.

- While a two-parent household is considered to be the best environment for children to thrive, the involvement of both parents, even if they are not living under the same roof, is the next best thing for children.

Participants said children have the right to "strong and stable relationships with both parents," and the right to get to know them. Many saw it as an important need in children's lives to ensure their well-being.

- It is best for children to feel loved by both parents.

- A child needs role models and the different characteristics, views and skills provided by each parent during the different phases of childhood. The perception is that men and women offer different but equally important viewpoints on life and that children are best served by having balanced views in their lives.

- A stable relationship with both parents is thought to "anchor" children and to aid in preparing them for adulthood and a responsible place in society.

Some participants also interpreted that a "stable relationship" would include the following.

- Regular contact with both parents and possibly including some sort of split living arrangements for the children.

- Parents would enforce the same set of rules so that children are not confused about what is to be their "expected" behaviour when either spending time with the mother or the father, or living with one parent or the other.

On a parental level, participants also felt this was an important criterion because it explicitly states that both parents have a role to play in their children's lives and have responsibilities to their children. This is a positive statement for both men and women.

- It is the perception that the "feelings" of fathers are rarely considered in decisions on parenting arrangements, which is considered to be unfair.

- For mothers, it underlines that fathers also need to be considered and are responsible for the needs of their children.

Criterion 4: The ability of the parent(s) to provide guidance, education, the necessities of life and other special needs of the child

The majority of participants considered this to be an important factor because, like Criterion 12, it takes into account the fundamental needs of children and the basic role and responsibility of parents to ensure that these needs are met.

There were, however, a number of different interpretations of the essence of this criterion.

(1) For some participants, the "foreground" or the focus of this criterion was on children's needs for "guidance, education, the necessities of life and other special needs." For others, the focus was more on the *parents* ability to provide these things. Importantly, those who saw the focus as being on children's needs were more likely to rate this criterion as "very important" than did those who perceived that the focus was on the parents.

(2) In the context of this particular criterion, participants perceived the word "ability" to have different meanings and emphasis.

- Most participants interpreted this word as meaning the "financial" resources to pay for the "basic" things a child needs such as shelter, food and education.

- Some also saw this word as being about the "willingness" of the parents to meet their obligations to their children.

- Quite a few also interpreted it to mean the "capabilities," "talent" or "skill sets" of parents.

Slightly more women than men, interpreted "ability" as primarily referring to financial resources and, thus, some women (a minority) were less likely to rate this criterion as "very important." They said that while, on one hand, they recognize that money is required to pay for the basic needs of children, on the other hand they were concerned with this interpretation of the word "ability" at two levels.

- They felt it made for inequality between parents in front of the court because one parent, often the father, had greater financial resources than the mother. Thus, their perception was that it would put women at a disadvantage.

- The financial aspect of a child's upbringing would overshadow the importance of parenting skills and obfuscate the more important issue of who potentially is a better parent in a given situation.

Others, both men and women, who saw financial means as a prerequisite but also interpreted ability to be about the other things we discussed, felt this was a very reasonable and necessary consideration in determining parenting arrangements. They further argued that it was a "fair" approach, giving both mother and fathers an "equal opportunity" in how they would individually or together accomplish the arrangements they had put forth in Criterion 12.

Some participants said that this particular criterion provided the courts with a great deal of "leeway" in decision-making because of the types of needs of children that were included (and this was also partly presented as an argument that there was no apparent gender bias built in to this criterion).

- "Guidance" was perceived to be an "almost ethical thought" whereas "basic needs" were thought to be "monetary."
- One parent could be perceived to have a better sense of guidance, while the other has a better sense of how to meet the basic needs of a child.
- One parent could be perceived to have more of an emotional bond with a child versus the other who has the money without the bond.

While many participants felt this criterion deals with some important concepts, particularly because it is the only one in which the need for "guidance" of children is explicitly recognized, some also expressed discomfort with the criterion as it stands. They expressed the following types of concerns.

- It needs to be more clear about what sort of criteria judges will be looking at *within* it.
- Some participants were uncomfortable with allowing the courts to decide:
  - Which parent is able to endow the children with a more ethical or moral background.
  - That one parent doesn't have enough money and so that parent should not have any rights over his or her children.

Criterion 6: The ability of the parents to cooperate and communicate on important issues concerning the child

Participants felt strongly that if there is no co-operation or communication between parents, children invariably suffer—separation or divorce is hard enough on children without the continued stress associated with parents who cannot get along afterwards.

Quite a few participants commented that the courts should consider very carefully the parents ability to co-operate on any issue for the good of their children.

- It is important for children to feel that both parents share the same point of view in relation to decisions about them.
- Children must have the *same* "guidelines" from both parents to reduce potential confusion.
- It is easier for children to get needed support from either parent when there is relative agreement on child-rearing issues between the two parents.

The general feeling expressed by participants is that the ability of parents to communicate properly is a necessary first step to being a parent after a separation or divorce. Notably though, some participants feel that the main reason that parents separate is because they cannot communicate, so it is difficult to imagine that they will be able to communicate better after a separation or divorce. In this regard, quite a few participants felt that mediation had a role to play in helping parents after a divorce and through transitional periods.

Criterion 14: The personality, character and emotional needs of the child

Participants felt that every child is different and therefore all three of these aspects must be taken into consideration when deciding what is best for the child.

One perceived aspect of this is that after a separation or divorce, a particular child may be better suited to live with one parent rather than the other, even though the "non-custodial" parent would still share in the child's development and provide emotional support. On a more general level, it was stated that, while both parents together can help bring out the best in their children and provide for their mental well-being, one parent may have more of an "emotional" connection with the child and should assume the primary role in the child's life, at least initially.

Participants also felt that there is another aspect that should be considered when decisions are made about living arrangements. It is their perception that there are certain situations, for whatever reason, where a "personality" clash between a parent and a child does not allow for a "harmonious" relationship between the two.

The problem that quite a few participants perceived with this criterion was the ability of the courts to evaluate this objectively, short of psychological assessment of children. Input from both the child and the parents may be considered, but participants felt both of these may be questionable.

- A child may be too young or immature, and open to manipulation by parents (we discuss this in more detail under Criterion 3 later in this section).
- The "objectivity" of parents in conflict after a separation or in the middle of a divorce is questionable in this area.

Criterion 13: Protecting the child from continued exposure to conflict

Most participants felt that exposing children to constant arguing and bickering between parents creates an unstable, insecure environment for children.

- It affects their psychological well-being and their ability to grow up to be well-adjusted adults.
- It puts children in the position of having to take sides between parents or to create a situation in which children are unsure how to react and are constantly confused.

- Some also felt that exposure to this type of situation can result in children adapting this type of behaviour (i.e., children see, children do).

There were some participants, albeit not a majority, who believed this was akin to family violence. They felt that verbal conflict between two parents in the presence of a child can be just as detrimental to a child's well-being as being exposed to physical violence. Another view held by this group is that ongoing conflict can escalate and turn into physical violence.

Most, however, do not put "family violence" and "conflict" in the same category.

- Since most perceived "conflict" to be arguments or disagreements between people, and thus to be "verbal" only, they did not consider this to be a threat to a child's safety.

- There are always disagreements between parents, so not only is it natural in general, but expected after a separation or divorce (e.g., "you didn't separate because you get along").

- "Conflict" is not necessarily a "bad" thing.

  - Children's reactions to situations of conflict between parents will vary considerably depending on the personality of each child.

  - Children can "learn" from conflict and develop important life skills as a result (Note: This was a counterargument to those who felt that exposure to this type of situation would always be detrimental to children).

- When separated (i.e., physically apart), parents may not be involved in as much conflict as they might have been during the marital relationship nor would they continue to have disagreements or arguments in front of their children even though they may continue to have their differences.

Criterion 11: The quality of the relationship that the child has with the parent(s)

There is considerable evidence from participants' responses that this particular criterion is too general and open to interpretation (i.e., what does quality mean and how would that be assessed?).

- Some participants interpreted this criterion as referring to the "link" a child has with one parent or the other. Under that interpretation, they felt that the continuation of this relationship should be a primary consideration in the interests of the child.

- Some others interpreted this criterion as referring to the "quality of parenting," to do with the "type" of time devoted by a parent to a child, which resulted in a lower rating.

- A minority thought this criterion referred to the "quantity of time" that had been devoted to parenting in the past. That is, they felt that the amount of time a parent had spent with a child in the past was perhaps an "indicator" of how "comfortable" or well-adjusted a child may be with the parent if he or she were to be the primary caregiver, and this too resulted in a lower rating.

Criterion 8: The willingness of each of the parents to encourage a close relationship between the child and the other parent

Most participants believed that, with rare exceptions, children love both their parents. And unless parents encourage children to maintain a close relationship with both parents, the general feeling was that this put a child's emotional development and well-being at stake.

- It was considered important for children to know that both parents love them.

- Some expressed the view that, in their experience, children often feel they played a role in the marital break-up. By having parents co-operate in this regard, they felt that parents would reduce children's feelings of responsibility for the breakdown.

- Co-operation between parents was viewed as eliminating hostile feelings between parents and allowing children to love both parents and to stay "connected" with both of them. Importantly, it is also seen to eliminate the need for children to take sides between parents.

The view expressed by quite a few participants was that children should not be used as "weapons to get back at the other parent." A few felt that given the importance of this, the courts should deal severely with parents who cannot or will not co-parent in a mature way.

Criterion 3: The views of the child

This particular criterion generated a great deal of controversy in the groups because most participants interpreted it to be about the child's input on future living arrangements.

Many participants agreed on the general principle that the consideration given to the views and opinions of children depended on their age *and* maturity, with the maturity of the children being considered to be far more important than their chronological age. Having said that, there was no consensus reached in the groups as to how to assess this maturity level, other than a few suggestions.

- Children should be at least 10 years old.

- It should be no different than the legal age at which children can choose which parent they want to live with (i.e., 14 or 15).

However, a large number of participants felt it was inappropriate to put children in the situation of having to choose between parents, regardless of their age or maturity.

While most participants agreed that children's wishes should be considered, they were divided on this issue.

One group strongly supported the view that children should be heard from.

- Since it is the children's futures that are being decided, the children should be allowed to speak for themselves and to represent their own interests in these types of proceedings.

- Sometimes parents are caught up in the emotional upheaval of the marital breakdown and can be "out of touch" with what their children may want or need.

- Other arguments put forward by participants were:

  - Children are smarter than we think.

  - Children don't lie.

  - Children know where they are loved, where their home is, who is the best or better parent.

  - Too often children are "left out" during divorces and this would help them feel as if they have a say in their own future.

- A few also pointed out that knowing how children feel about different living arrangements, for example, can affect how parents decide to divide or allocate responsibilities. In other words, they saw no point in placing children into a situation in which they might be "completely miserable."

Another group, representing many participants, had reservations about seeking the children's input in this adversarial type of situation, both in terms of the difficult situation they felt was created for the children and the questionable value of the children's input on decisions about their welfare.

- Where parents are in a court of law battling over their children, seeking the children's opinions was seen as placing responsibility on the children and creating additional stress in their lives. Participants felt that children love both their parents "no matter what" and do not want to hurt either of them.

- Participants also felt that children can be manipulated or influenced unduly by one parent or the other, particularly when they are young.

- Many believed that the types of decisions to be made about children are "adult decisions," and children are incapable of making these types of decisions.

  - Children are motivated by self-interest, which some argued has nothing to do with best interest. For example, some participants hypothesized that if forced to choose between two parents, children would lean more towards the household "where there is less discipline, more freedom and fun" or a more "materialistic," instant gratification environment, particularly when they are younger.

  - What children want isn't always the best for them and that is a parent's decision to make.

  - Because a mother and father often provide different things to children, and some days children want their mothers and some days their fathers, how are children to decide between the parents?

  - Are children able to give rational answers in these types of situations? Like their parents, they are caught up in the emotions of their situations. Children are also caught up in the controversy between their parents.

A number of participants commented that there is less need for the courts to consider the views of the child when the parents have a relatively good relationship and can reach agreement on the key issues affecting their child.

When the opinions of the child are to be considered, some participants felt they should not be given in the presence of the parents, so that children remain relatively free to express their wishes.

Criterion 2: The opportunity for the child to maintain a strong and stable relationship with other members of his or her family

Participants considered it important for children to maintain relations with the extended family—grandparents, aunts and uncles, cousins, etc. These relationships provide children with a sense of identity. More importantly, these relationships were seen as providing additional love, security and stability for children in general and in the wake of a marital breakdown.

Being allowed and encouraged to interact with other family members was seen as reinforcing the idea that, although the parents have separated, they are not "divorcing the children from the family and the circle of family love."

Criterion 7: The ability of the child to adjust to the parenting arrangement

While participants believed this to be an important issue and one that would, of course, concern parents, most felt that this particular issue would have already been taken into consideration and addressed primarily in Criterion 12. Criterion 12 deals with "arrangements that foster the child's emotional growth, health, stability and physical care."

Beyond this, quite a few participants argued that this was unfortunately irrelevant. The family's situation had already changed, which meant that children had no choice but to adapt to a new and different situation.

Some participants felt that children are resilient and adaptable and it will just take some time.

A number of participants also felt it would be difficult, in advance of "living" the arrangements, to know how well the children would adjust. They felt it was much more important to build in some mechanisms to allow for the readjustment of parenting arrangements in the event children did run into problems.

Criterion 10: Ensuring there is no preference in favour of either parent on the basis of that parent's gender

The majority believed that discrimination based on gender is unacceptable and that ensuring there is no preference based on the gender of a parent is a fundamental right. Some argued that gender has nothing to do with the rights or interests of children.

Many participants viewed gender discrimination as a concern because they believed that under the *Divorce Act*, women are favoured over men and fathers are too often discriminated against in custodial matters. Participants felt that gender of the parent should not be considered and there should be no presumptions that one parent is better than the other in providing proper care for their children based on their gender.

The majority of participants believed that if the courts adopted Approach 3 to determine parenting arrangements and emphasized Criteria 12 and 4, (concerning parenting plans and how these plans would be carried out) there would be a "level playing field" and the current gender bias and gender stereotyping by the courts would no longer exist.

Criterion 15: The caregiving role assumed by each parent during the child's life

The majority of participants felt that this consideration is one of the least important for the courts in determining future parenting arrangements.

- A divorce results in massive changes in the lifestyles of both parents, so weighing what they did before into the equation is not considered to be of much value. A break-up is all about redefining goals and it doesn't matter who the caregiver was in the past, it's going to change.

- In most two-parent relationships, there is a tendency for a mother and father to adopt different roles, which is not to say that either could not take on the other's role.

In essence, participants said that it is a "new start" for both parents and parents should not be favoured or dismissed because of the role they played or did not play in their children's lives in the past.

Participants raised one further point about a perceived gender bias built in to this criterion. It is usually women who stay at home with children and as a result have been favoured by the courts

in the past as being the parent best able to continue looking after the children given the role they have fulfilled in the past. Participants argued that this doesn't necessarily mean that the mother is the "better" parent. Besides, even if a mother was a "stay-at-home parent," the chances are slim that she will be able to stay at home after the divorce.

As with Criterion 10, participants felt strongly that the parenting plan, and the demonstrated ability of each parent to carry out the parenting plan, should be given far more weight and consideration than the past caregiving role of either parent.

Criterion 5: The child's cultural and religious background

For most participants, this criterion was already implicitly contained in others, so it was considered less important in its own right. To reiterate:

- Criterion 12 deals with arrangements to foster the child's emotional growth, health and stability, etc.
- Criterion 4 deals with the ability of parents to provide guidance, etc.

Further, many felt that maintaining a relationship with both parents and the extended family also allowed children exposure to, and involvement in, their culture and religion.

For some participants, this was an unimportant criterion.

- This issue can be dealt with after all the other issues, which are more important because they deal with the basic needs of a child.
- Unless it was an inter-racial or inter-cultural relationship, life would continue and no special provisions would be needed.
- Children should be allowed to choose their own religious beliefs when they are older and to choose to attend services, rather than be forced to attend.

APPENDIX A: SCREENER'S GUIDE

Hello, I'm _____ of R.I.S. Christie, a marketing research company. We are organizing a research project on behalf of the Department of Justice Canada -- a department of the federal government. In this project, an individual like yourself is chosen to sit down with several others and give ideas and opinions. We are having a few of these sessions, and would be interested in having you participate.

The purpose of the research is to get public input on some issues related to children and how decisions should be made about children in the event of a divorce.

Your participation is voluntary, and everything you say will be kept confidential. If you choose not to participate, this will not affect you adversely in any way. Thank you for your cooperation.

I need to ask you a few questions to see if you fit the profile of the type of people we are looking for in this research.

0) **Record gender:**

Male	1	→ **Monitor quotas**
Female	2	

1) Do you, or does anyone in your household, work for . . . ? **(READ LIST)**

	No	Yes	
A marketing research firm	( )	( )	
An advertising agency	( )	( )	
A magazine or newspaper	( )	( )	
A federal or provincial government department dealing with legal issues	( )	( )	**If "yes" to any, thank and terminate**
A social services agency	( )	( )	
A radio or television station	( )	( )	
A public relations company	( )	( )	
A law firm	( )	( )	

2) We would like to talk to people in different age groups. Into which **one** of the following groups should I place you? **(READ LIST)**

18 or under	1	→ **Thank and terminate**
19 - 24	2	
25 - 34	3	**Watch quotas**
35 - 44	4	
45 - 54	5	
55 or over	6	→ **Thank and terminate**

3a) What is your marital status? Are you currently.....? **(Read list)**

Married	1	**Go to Q.3b**
Common-law	2	**Go to Q.3c**
Divorced	3	→ **Go to Q. 4a**
Separated		
Single		**Go to Q.3d**
Widowed		**Thank and terminate**

3b) Prior to your current marriage, have you ever been divorced?

Yes	1
No	2

Go to Q.4a

3c) Prior to your current relationship, have you ever been divorced?

Yes	1
No	2

Go to Q.4a

3d) Have you ever been married?

Yes	1
No	2

4a) Do you have any children under 18 years of age living with you at home?

Yes	1
No	2

4b) Do you have any children under 18 years of age living with a former spouse or partner?

Yes	1
No	2

If "No" in both Q.4a and Q.4b, thank and terminate

4c) And how many children under 18 years of age do you have either living with you or living with a former spouse or partner?

1 2 3 4 5 or more

4d) And what is/are their age(s)? **(Read list)**

Under 1 year	1
1-5 years	2
6-10 years	3
11-14 years	4
15-17 years	5

If "currently" or "ever" divorced in Q.3 series of questions or separated in Q.3a, ask; otherwise go to Q.5

4e) Because we would like to talk to a cross-section of parents, I would like to ask you which one of the following statements best describes your current arrangement with regard to your child(ren). **(Read list and accept one answer only)**

You have ***full*** custody	1
You have ***joint*** custody	2
You have access only to your child(ren)	3
Doesn't apply because there were no children from the former relationship	4

5) What is the highest level of education you have received? **(Do not read list)**

Some high school or less	1	**Thank and terminate**
Completed high school	2	
Some college/university	3	**Watch quotas**
Completed college/university	4	
Post-graduate studies	5	

6a) Are you currently in the paid labour force?

Yes — Is that … Full-time 1 / *or* / Part-time 2 → **Ask Q.6b**

No — Would you classify yourself as …

Student	3
Homemaker	4
Unemployed	5
Retired	6 → **Go to Q.6c**

6b) And what is your occupation -- that is, the type of work you do and the type of company you work for? **(Go to Q.5 after asking this question)**

_____ **(Type of work)** _____ **(Type of company)**

6c) **(Ask only of retired people:)** And what was your occupation – that is, what type of work did you do before you retired? **(Check against occupation exclusions in Q.1)**

_____ **(Type of work)** _____ **(Type of company)**

7) Which ethnic or cultural group do you most closely associate yourself with?

_____

Recruit cross-section

8) We would like to talk to a cross-section of people with different income levels. Which ONE of the following groups best describes your total household income before taxes? **(READ LIST)**

Under $30,000	1
$30,000 - $39,000	2
$40,000 - $49,000	3
$50,000 - $69,000	4
$70,000 or over	5

→ **Watch quotas**

9) Are you personally active in any groups involved in lobbying the government on issues related to divorce?

Yes	1	**Thank and terminate**
No	2	

10) As I mentioned to you earlier, we are organizing some discussion groups among people like yourself. Have you ever taken part in such discussion groups?

Yes	1	
No	2	→ **Go to Q. 12**

11a) And when was the last time you attended a discussion group?

6 months ago or less	1	→ **Thank and terminate**
OR more than 6 months ago	2	

11b) What topics have you ever discussed?

_____

(If any child-related or divorce-related topics, thank and terminate)

12) Sometimes participants in the discussion session are asked to write out their answers to a questionnaire, or read descriptions of ideas for various products or services. And in these particular sessions, people will be asked to do a lot of reading and writing. Is there any reason why you could not participate?

Yes	1
No	2

Terminate if respondent gives a reason such as sight, hearing, verbal, or related to writing, or if they think they may have difficulty expressing their thoughts.

13) Please rate yourself on each of the following statements using a scale from 1 to 5, where "1" means you strongly agree and "5" means you strongly disagree. **READ STATEMENT AND CIRCLE CORRESPONDING NUMBER**

	Strongly Agree				*Strongly Disagree*
	1	*2*	*3*	*4*	*5*
a) I would feel comfortable talking with a small group	*1*	*2*	3	4	5
b) I usually have an opinion on any given subject and can express my opinion freely	*1*	*2*	3	4	5
c) I consider myself an outgoing individual who enjoys talking to others	*1*	*2*	3	4	5
d) I prefer to let others do the talking	1	2	3	*4*	*5*

NOTE: ALL RESPONDENTS MUST FALL WITHIN THE BOXED AREAS TO QUALIFY; WE WANT TO INVITE PEOPLE WHO ARE ARTICULATE AND INTERESTED IN A GROUP DISCUSSION, NOT JUST THE INCENTIVE.

INVITATION

We are going to talk about some issues surrounding children and divorce. The entire session will last about 3 hours. In the first hour of the session, you will be asked to read various materials related to these issues, on your own. A 2-hour group discussion will then follow. We are interested in your opinion and believe you will find the session very interesting. All of your comments will be kept in strict confidence, and you will not be contacted by anyone outside the facility. For taking part, you will be given an honorarium of (*5:30* session $90; *7:30* session $75) and refreshments will be served during the session. Would you be willing to participate?

Yes	1	**CONTINUE**
No	2	**THANK AND TERMINATE**

Thank you. We would like to invite you to participate in one of our group discussions. The session will last 3 hours, and will be held:

SCHEDULE

CITY	DATE	LOCATION	GROUP TYPE	TIME
Toronto	March 8	**Camelford Graham/Focus First** 2300 Yonge Street Suite 1001	Women Men	5:30 - 8:30 P.M. 7:30 - 10:30 P.M.
Halifax	March 9	**Omnifacts Research** Cogswell Tower 2000 Barrington Street	Men Women	5:30 - 8:30 P.M. 7:30 - 10:30 P.M.
Edmonton	March 13	**Research Innovations** 10303 Jasper Avenue Suite 1000	Women Men	5:30 - 8:30 P.M. 7:30 - 10:30 P.M.
Vancouver	March 14	**6th Line Solutions** 1156 Hornby Street	Men Women	5:30 - 8:30 P.M. 7:30 - 10:30 P.M.
Montreal	March TBD	**TBD**	Women Men	5:30 - 8:30 P.M. 7:30 - 10:30 P.M.

Someone from our office will be calling you back to confirm these arrangements. Could I please have your name and phone number where we can reach you during the evening and during the day?

Name: _____

Address: _____

Evening phone: _____ **Work phone:** _____

Thank you very much!

Recruited by: _____

Confirmed by: _____

APPENDIX B: MODERATOR'S GUIDE

1) Introduction Prior to Group Discussion

a) **Introduce self, and explain purpose of research:** This research is being conducted on behalf of the federal government, specifically Justice Canada. As you probably know, there has been ongoing public debate on the issue of parenting arrangements for children after a separation or divorce. Justice Canada is looking at options or ways to reform the Divorce Act and specifically the sections related to parenting arrangements and how decisions should be made about children in the event of a separation and divorce. So, the purpose of the research is to explore people's thinking about issues like:

For example:

-- What parenting arrangements do you feel would work best?

-- What are the most important considerations that judges should take into account about children when they make decisions about parenting arrangements after a divorce?

-- and so on.

We are going to ask you to consider these types of issues and to discuss your views on them.

b) **Explain individual review process:** Before we start the actual discussion, we wanted to give each of you time to study the issues and to think about them. We've allowed approximately 45 minutes to do so.

In the folder in front of you **(ASK PARTICIPANTS TO OPEN UP FOLDER)**, there are two broad aspects we would like you to consider. The first one is titled "Parental Arrangements Following Separation or Divorce." The second one is "How Can the Law Determine What Is 'In the Best Interests of the Child?'." Let's review what we are asking you to do in each one.

MODERATOR WILL REVIEW CONTENTS OF THE TWO HAND-OUTS AND EXPLAIN GROUND RULES TO PARTICIPANTS:

1) No talking to each other to ensure that each person gets a chance to organize their thoughts independently; there will be plenty of time during the discussion session that follows to share opinions/compare points of view.

2) Regarding open-ended questions, use these to make notes to refer to during the discussion; don't worry about spelling, grammar or even whether anyone else can read the writing.

2) Introduction to Group Discussion

a) **Review group discussion procedures**

-- Role of moderator

-- No right or wrong answers

-- Confidentiality: names will not appear in reports

-- Audio-taping

-- Presence of observers

b) **Participant self-introductions:** first name, "sentence or two about what you're up to these days", including number and age of children and marital status.

3) Discussion of Different Views on Parental Arrangements Following Separation or Divorce

a) Here are some examples of different parenting arrangements following a separation or divorce. Please read through it, fill in the questions at the end, and then we'll discuss your views.

b) Pass out hand-out and give participants time to read it.

c) Do a count of how many people selected each of the 3 approaches.

d) Discuss reasons for choices starting with "not sure/it depends" and then moving to those with the least votes.

e) For "not sure/it depends", probe reasons and rationales

For each approach probe:

-- What particular aspects of this approach to parenting arrangements do you support or like?

-- What aspects do you not support, dislike or have concerns about? Are there cases where this parenting arrangement would not be appropriate?

-- Is there anything confusing or unclear?

-- Is there any other information that is required?

f) Probe each of the following if necessary:

Approach #1: Custody and access

-- In general, does this suggest to you in any way that in this particular arrangement one parent would be a "winner" and the other parent would be a "loser"? Probe for reasons

-- Does the term "sole custody orders" suggest that one parent would have more or too much power over the other parent? Probe for reasons

Approach #2:

-- Do you feel this arrangement would work or not work if the parents do not get along?

g) On a flip chart write the following phrases:

Shared parenting

Parental responsibility

Parental authority

For each one:

-- Based on what you understand from each of these terms, which one of the three approaches does it fit and why?

-- Why doesn't it fit the other(s)?

-- Is there anything confusing or unclear?

3) Discussion of "Best Interests of the Child"

a) Before discussing how each of you felt about the list of criteria you were asked to consider, I want to ask you a more general question. How many of you feel that "Best Interest of the Child is a reasonable approach to take in determining parenting arrangements? Reasons why or why not

b) Do you have any concerns about this, i.e., the "Best Interest of the Child" as being the sole factor that would be taken into account by the courts in determining parenting arrangements? Probe for concerns and reasons

Probe following, if necessary:

Is it how the criteria are written or stated, i.e., the words used?

Are there any criteria missing that you believe need to be included?

c) Using a flip chart take a count of how each criteria was allocated.

d) First thinking about the criteria that you put into the "**Most Important**" category, what are the main ideas or concepts that made you choose those particular criteria?

e) What are the main ideas or underlying concepts for the items that you put into the second most category , that is the "**Quite Important**" category?

f) What about those you put into the "**Less Important**" category -- what are the main ideas or concepts that made you choose those particular criteria?.

Probe following, if necessary:

3. The opinions and wishes expressed by the child

In what situations or under what circumstances do you think it would be appropriate or not appropriate to consider the views of the child?

What guidelines would you suggest be considered?

9. ***A proven history of family violence***

   What did you interpret or understand from the word "proven"? Probe as to whether this means a police record, a conviction, or other?

   What did you interpret or understand from the word "violence"? Does it include physical violence only? Does it include psychological violence?

   Do you agree or disagree with this? Why or why not?

10. ***Ensuring that there is no preference in favour of either parent on the basis of that parent's gender***

    Some people have said that this particular criteria is more about the parents rather than it is about the child. Do you agree or disagree with this statement and why?

    Should this item even be included on a list dealing with "Best interests of the child."

g) Regardless of what criteria are finally selected, do you think it would be useful or not useful to include such a list for judges to use in making their decisions about these issues? Why or why not?

THANK PARTICIPANTS FOR THEIR TIME

APPENDIX C: PARENTAL ARRANGEMENTS FOLLOWING SEPARATION OR DIVORCE

After divorce or separation, parents continue to be parents and to have responsibilities towards their children. People have different points of view on what parenting arrangements should be used.

The following are some examples of different approaches that could be used to determine parenting arrangements.

APPROACH 1 (Approach currently used in Canada)

The *Divorce Act* states that the parent who has **"custody"** of a child is responsible for that child's care and upbringing. In the case of a sole custody order, the most common order, the parent with sole custody is responsible for providing the child with a home and making decisions about things like education and health without having to involve the other parent.

The parent who has **"access"** has "visiting rights" and the right to make inquiries and be given information on the child's health, education and welfare.

It is also possible for courts to make **joint custody** orders but these are the exception. In this type of arrangement, both parents participate in making decisions regarding the child. The courts will only grant joint custody orders when parents get along well enough to make these important decisions together.

APPROACH 2

In the second approach, even after a divorce or separation, each parent would continue to have all the duties, powers, responsibilities and authority that all parents have. Both parents would share all the rights and responsibilities of raising the children equally, or almost equally. The child would live with each parent for an equal or near equal amount of time and both parents would have equal authority to make decisions about child related matters. One parent could not make major decisions about the child without the consent of the other parent. Courts would be a last resort to resolve disputes that could not be settled by the parents.

APPROACH 3

In Approach 3, even after a divorce or separation, each parent would continue to have all the duties, powers, responsibilities and authority that all parents have. However, this would not mean that living arrangements for the child or decision-making authority have to be shared equally between the parents. Different parental responsibilities would be identified and allocated between the parents in a flexible way.

Parents could share responsibilities equally when it is workable and appropriate to do so. Parental responsibilities might also be divided in some other way between the parents or given exclusively to one parent if that best meets the needs of the child. If parents are unable to work out the division of responsibilities together, this would be done by the courts.

What do you think?

Which one of the 3 approaches to parental arrangements should be used? **Please check one box**

[ ] Approach 1
[ ] Approach 2
[ ] Approach 3
[ ] Not sure/it depends

Why do you say that?

APPENDIX D: ISSUES: HOW CAN THE LAW DETERMINE WHAT IS "IN THE BEST INTEREST OF THE CHILD?"

Current Situation

At the present time, the *Divorce Act* says that judges have to consider the "best interest of children" when they make decisions about parenting arrangements for children after a divorce. As well, the U.N. Convention on the Rights of the Child states that the best interest of the child shall be a primary consideration in all actions concerning children. This means that they can decide who the children will live with and who will make important decisions about the children's health, education, and so on.

However, the *Divorce Act* does not say what criteria the judge should use when making decisions on what is in the best interest of the child.

What we would like you to do

On the following page is a list of criteria that judges could use in making these decisions. First, please read through this list of criteria that have been identified for "Best interest of the child".

What we would then like you to do is to indicate, from your personal point of view, which of these criteria are:

1. *Most Important* for judges to use in making decisions on parenting arrangements
2. *Quite Important*
3. *Less Important* compared to other criteria

You must put all of the 15 criteria into one of the 3 categories listed above **and** ***you must choose 5 to fit into each of the categories.***

CRITERIA FOR *"BEST INTERESTS OF THE CHILD"*

Place an "X" in the appropriate column for each criteria, based on how important you personally believe it to be.

Number	CRITERIA	***MOST*** **Important**	***QUITE*** **Important**	***LESS*** **Important**
1.	The opportunity for the child to maintain a strong and stable relationship with both parents	[ ]	[ ]	[ ]
2.	The opportunity for the child to maintain a strong and stable relation with other members of his or her family	[ ]	[ ]	[ ]
3.	The opinions and wishes expressed by the child	[ ]	[ ]	[ ]
4.	The ability of the parent(s) to provide guidance, education, the basic needs and other special needs of the child	[ ]	[ ]	[ ]
5.	The child's cultural and religious background	[ ]	[ ]	[ ]
6.	The ability of the parents to cooperate and communicate with each other on important issues concerning the child	[ ]	[ ]	[ ]
7.	The ability of the child to adjust to the new parenting arrangement	[ ]	[ ]	[ ]
8.	The willingness of each of the parents to encourage a close relationship between the child and the other parent	[ ]	[ ]	[ ]
9.	A proven history of family violence	[ ]	[ ]	[ ]
10.	Ensuring there is no preference in favour of either parent on the basis of that parent's gender	[ ]	[ ]	[ ]
11.	The quality of the relationship that the child has with the parent(s)	[ ]	[ ]	[ ]
12.	Arrangements that encourage the child's emotional growth, health, stability and physical care at every stage of the child's development	[ ]	[ ]	[ ]
13.	Protecting the child from continued exposure to conflict between parents	[ ]	[ ]	[ ]
14.	The personality, character and emotional needs of the child	[ ]	[ ]	[ ]
15.	The caregiving role assumed by each parent before the breakup	[ ]	[ ]	[ ]

Please write down your reasons for choosing each of the five criteria as being *"Most Important"*.

Criteria Number (Write in Number Below) **COMMENTS:** ***Why "Most Important"?***

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